

1 APPEARANCES:

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3 On behalf of The Wireless Telecommunications
4 Bureau of the Federal Communications
5 Commission:

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3 On behalf of American Cellular Network
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18 On behalf of Comcast Cellular

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1 APPEARANCES (Continued):

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C O N T E N T S

THE WITNESS EXAMINATION BY COUNSEL FOR
 DAVID A. LOKTING FEDERAL COMMUNICATIONS
 COMMISSION

By Mr. Reideler 7, 60, 67, 73, 78, 85, 97

By Mr. Weber 50, 66, 71, 76, 84, 86

EXAMINATION BY COUNSEL FOR
 ELLIS THOMPSON CORPORATION

By Mr. Larson 86

EXAMINATION BY COUNSEL FOR

TDS

By Mr. Salpeter 98

E X H I B I T S

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P R O C E E D I N G S

1

2

3 Whereupon,

4

DAVID A. LOKTING,

5

business address at 209 Southwest Oak Street,

6

Portland, Oregon, 97204, was called as a witness

7

by counsel for Federal Communications Commission,

8

and having been duly sworn by the Notary Public,

9

was examined and testified as follows:

10

EXAMINATION BY COUNSEL FOR

11

FEDERAL COMMUNICATIONS COMMISSION

12

BY MR. REIDELER:

13

Q. May I have your name for the record,

14

please?

15

A. David Lokting.

16

Q. Mr. Lokting, Joe Weber and I represent

17

the Wireless Telecommunications Bureau in this

18

matter and it's the Bureau's task to demonstrate

19

to what degree Mr. Thompson has actual control

20

over the Atlantic City facility. So that's where

21

we're heading in this deposition, just to let you

22

know.

23

A. Okay.

24

Q. Could you state what your occupation

25

is?

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1 A. I'm an attorney.

2 Q. And where is your law firm located?

3 A. Portland, Oregon.

4 Q. Are you familiar with Ellis Thompson
5 and Ellis Thompson Corporation?

6 A. Yes, I am.

7 Q. And in what degree? How are you
8 familiar with them?

9 A. My firm represents both Mr. Thompson
10 and Ellis Thompson Corporation and I have had a
11 significant degree of responsibility for that
12 representation.

13 Q. When were you initially retained by
14 Mr. Thompson?

15 A. Late 1987.

16 Q. Were you retained by Ellis Thompson
17 Corporation at that time as well?

18 A. Not at that time. Ellis Thompson
19 Corporation was formed in, I believe, 1988.

20 Q. Were you instrumental in incorporating
21 the Ellis Thompson Corporation?

22 A. Yes, I was.

23 Q. How did your relationship with
24 Mr. Thompson develop? Was he referred to you by
25 someone else?

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1 A. He was referred to our law firm by
2 another lawyer.

3 Q. Did this lawyer have anything to do
4 with TDS?

5 A. Not with TDS. With Amcell.

6 Q. Now, do you represent Mr. Thompson or
7 the -- let's just call it "the corporation"
8 instead of Ellis Thompson Corporation -- the
9 corporation before the FCC in any matters?

10 A. I believe our firm appears as counsel
11 of record with respect to FCC matters, although
12 principal representation is by the firm
13 Fleischman & Walsh who are FCC counsel to
14 Mr. Thompson and the corporation.

15 Q. I guess what I'm trying to get to is,
16 are you conversant with some of the FCC
17 requirements of its licensees?

18 A. Yes, I am.

19 Q. Now, do you take these requirements
20 into consideration when you're advising
21 Mr. Thompson?

22 A. Yes, I do.

23 Q. What is your affiliation with Ellis
24 Thompson Corporation besides being its lawyer?
25 Are you a principal in the corporation at all?

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1 A. I'm not a principal. I am the
2 assistant secretary of the corporation, which is
3 a corporate office. And as assistant secretary,
4 I primarily perform administerial functions, such
5 as signing forms or signing documents that any
6 officer would be authorized to sign. But even in
7 that context, I usually do not sign documents or
8 forms or make filings without calling
9 Mr. Thompson first and advising him of what I'm
10 doing.

11 Q. In other words, you're not a
12 shareholder?

13 A. No, I'm not.

14 Q. And from what I gather, from what
15 you've told me, any decisions that are made by
16 you on behalf of Ellis Thompson Corporation
17 obviously require his approval, is that correct?

18 A. That's correct.

19 Q. I would like to go into some of the
20 policy aspects that Mr. Thompson plays in the
21 corporation.

22 MR. REIDELER: I would like this
23 document marked Lokting Exhibit Number 1,
24 please.

25 (Lokting Exhibit No. 1 was

1 marked for identification.)

2 BY MR. REIDELER:

3 Q. Are you familiar with this document?

4 A. Yes, I am.

5 Q. And would you identify it, please?

6 A. This document is an agreement dated
7 December 30th, 1987 which we commonly refer to as
8 the switching agreement or the construction and
9 switch sharing agreement. And it has attached to
10 it three amendments which amended certain terms
11 of the agreement over subsequent years.

12 Q. Would you call this a management
13 agreement or management contract?

14 A. We typically refer to amendment number
15 1 as the management agreement.

16 Q. And this is between who?

17 A. This is between Amcell of Atlantic
18 City, Inc., Mr. Thompson and Ellis Thompson
19 Corporation.

20 Q. Is there a relationship between Amcell
21 and Comcast that you're aware of?

22 A. After the initial agreement was entered
23 into on December 30th, 1987, subsequently, I
24 believe in March or April of 1988, Comcast
25 corporation acquired Amcell via merger. And it's

1 my understanding that Amcell became a subsidiary
2 of Comcast. There are several tiers. Amcell of
3 Atlantic City is a subsidiary of American
4 Cellular Network Corporation which, I believe, is
5 a subsidiary of Comcast.

6 Q. So Amcell is essentially the managing
7 entity of the Atlantic City system, is that
8 correct?

9 A. Under amendment number 1, it is.

10 Q. Do you know if Amcell manages other
11 systems other than the Atlantic City system?

12 A. Yes, it does.

13 Q. Do you know if there are any
14 differences between this contract and the
15 contracts it has with other systems or how it
16 manages other systems?

17 A. I don't know directly. I have not seen
18 the other contracts. They have represented to us
19 that this is -- the terms of the their management
20 to us is identical to the way they manage other
21 systems and I'm familiar there are various cost
22 allocations that are allocated in an equivalent
23 matter.

24 Q. Did you assist Mr. Thompson in
25 negotiating this contract?

1 A. Yes, I did.

2 MR. REIDELER: I would like to identify
3 this item as Lokting Number 2, please.

4 (Lokting Exhibit No. 2 was
5 marked for identification.)

6 BY MR. REIDELER:

7 Q. Are you familiar with this document?

8 A. Yes, I am. This document is a prior
9 draft of the original construction and switch
10 sharing agreement and it contains notations on it
11 which are modifications to the document that I
12 negotiated and requested of Amcell.

13 Q. Is that your handwriting?

14 A. Yes, it is.

15 Q. And were there other drafts of the
16 agreement besides the one you have before you?

17 A. Yes, there were.

18 Q. And did you edit those as well?

19 A. No. I believe Stuart Feldstein did, of
20 Fleischman & Walsh.

21 Q. And this was on behalf of Mr. Thompson?

22 A. Mr. Thompson, right.

23 Q. And did you review Mr. Feldstein's
24 edits?

25 A. Well, actually Mr. Feldstein, his edits

1 preceded our representation of Mr. Thompson so I
2 didn't really review those. I think they were
3 incorporated into Exhibit Number 2 as it came to
4 me and then I took it from there and made further
5 edits and further negotiated it on behalf of
6 Mr. Thompson.

7 Q. Was Mr. Thompson consulted before these
8 edits were finalized?

9 A. Absolutely.

10 Q. Can you recall what concerns
11 Mr. Thompson might have had with the original
12 version of the contract that was presented to
13 him?

14 A. Yes, I can. Actually, on Exhibit
15 Number 2, there are various areas here where it's
16 noted insert A, insert B.

17 Q. Yes.

18 A. And I don't see the inserts attached
19 but they contain more significant revisions to
20 the document that I prepared. And just going off
21 of memory, I know that before this agreement was
22 signed, we consulted with TDS to obtain whatever
23 input they had on the agreement and I reviewed
24 the agreement myself and with Mr. Feldstein.

25 One concern was that the gist of the

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1 agreement was that Amcell was going to construct
2 the system on behalf of Ellis Thompson as
3 Mr. Thompson's agent and Amcell represented that
4 it could do so at a guaranteed maximum cost. In
5 addition, one of the central purposes of entering
6 into this agreement was to obtain switching
7 services from Amcell using a Motorola switch.
8 And one of the concerns that TDS had was that
9 switch technology was ever changing and they were
10 concerned that if we entered into an agreement
11 today, perhaps we might not have the best
12 available technology at the actual time the
13 system was constructed, because Mr. Thompson's
14 application with the FCC was still in process and
15 the construction permit had not yet been
16 awarded.

17 So one of the concerns was to require
18 that Amcell's design of the system incorporate
19 the most current, best available technology.

20 Q. This was Mr. Thompson's concern?

21 A. Yes. For the system. This was his
22 concern. And I believe that's the language of
23 one of his inserts that reflects that.

24 Another concern was that Amcell had
25 agreed to construct the system for a guaranteed

1 maximum cost and that cost was bid at less than
2 what we knew to be available otherwise. So he
3 was concerned that the agreement reflect --

4 Q. He being Mr. Thompson?

5 A. Mr. Thompson was concerned that the
6 agreement should reflect that Amcell would be
7 obligated to construct the system at a guaranteed
8 maximum cost. So that was another concern.

9 And then the third concern was the rate
10 that the Atlantic City system would pay for
11 switching services. We had negotiated a rate of
12 5 cents per minute. And in the course of
13 negotiating that rate, we were working with
14 projected income for the system --

15 Q. When you say we, that's you and
16 Mr. Thompson?

17 A. Yes, Mr. Thompson and I. And in
18 connection with discussions with Amcell too, we
19 were looking at projected revenues and expenses
20 and usage of the system in arriving at that
21 number. And as a part of that, there were
22 assumptions made about the permanent charge to
23 system users for use of the cellular service.
24 And there was a 30 cents per minute threshold
25 that -- at least I have a vague recollection it

1 was a 30 cents per minute threshold. I was
2 concerned that through competitive marketplace
3 conditions, if the permanent charge dropped below
4 30 cents per minute, then the 5 cents per minute
5 switching charge would be too great of an
6 expense.

7 Q. Did Mr. Thompson share this?

8 A. Yes, Mr. Thompson shared this. I
9 shared all of my concerns with him and he agreed
10 with them. So we built into this agreement an
11 adjustor, pro rata adjustment in the event the
12 per minute charge on the system dropped below 30
13 cents per minute.

14 Q. I would like to return once again to
15 Exhibit Number 1.

16 A. Okay.

17 Q. You touched on this before. This
18 concerns the amendments that are attached at the
19 back of the agreement, beginning on page 144287.
20 I believe there are three separate amendments.

21 A. Right.

22 Q. Could you please identify what these
23 are?

24 A. Amendment number 1, which begins on
25 144287, is a fairly -- what it actually adds is a

1 new section to the agreement. And the section
2 relates to provision of management services by
3 Amcell for system operations.

4 Amendment number 2, number 144295,
5 dated June 16, 1989, this is an amendment that
6 was entered into fairly soon after amendment
7 number 1 and before the system actually became
8 operational. And it's really an amendment to the
9 calculation of Amcell's management fee and was
10 entered into to reduce the management fee.

11 Q. Now moving on to amendment 3.

12 A. And amendment number 3 is dated
13 November 23, 1990. This was probably a year and
14 a half after the system became operational. And
15 at this point we really moved the office
16 management functions out of Atlantic City and
17 entered into an arrangement that the Atlantic
18 City system would be managed out of Amcell's
19 Wilmington office on an allocated cost basis.

20 Q. With regard to the three amendments,
21 who initiated these amendments? Were they
22 initiated by you on behalf of Mr. Thompson or
23 were they initiated by Amcell or do you recall or
24 was each one different?

25 A. Well, I would say they were initiated

1 by Amcell. They were the product of ongoing
2 discussions between us.

3 Q. They were negotiated by you and
4 Mr. Thompson and with Amcell, is that correct?

5 A. Yes, that's correct.

6 MR. REIDELER: I would like to have
7 this labeled Lokting Number 3, please.

8 (Lokting Exhibit No. 3 was
9 marked for identification.)

10 BY MR. REIDELER:

11 Q. This is a letter dated November 2nd,
12 1994 and it's to Jeff Smith from you.

13 A. That's correct.

14 Q. As I gather from looking at the letter,
15 this concerns issues that Mr. Thompson wanted to
16 raise at a quarterly meeting, is that correct?

17 A. That is correct.

18 Q. I would like to direct your attention
19 to the portion of the letter that concerns
20 management fees. We'll probably be referring
21 back to this letter several times. Right now I
22 would just like you to look at the management fee
23 aspect of the letter.

24 Would you say that pretty well sums up
25 Mr. Thompson's feelings about Comcast management

1 fees?

2 A. Yes, I would.

3 Q. And would it be safe to say that
4 Mr. Thompson wasn't always happy with the rates
5 that he was given by Amcell?

6 A. I think that's correct.

7 Q. I think you mentioned earlier that
8 managing the system, the Atlantic City system,
9 out of Wilmington was Amcell's idea, is that
10 correct?

11 A. Yes, it was.

12 Q. And did Mr. Thompson have any
13 misgivings about this arrangement?

14 A. No.

15 Q. Did you have any misgivings about it?

16 A. No.

17 Q. And I presume it was done only after he
18 gave his approval?

19 A. Yes.

20 MR. REIDELER: I would like to have
21 this item labeled Lokting Exhibit Number 4,
22 please.

23 (Lokting Exhibit No. 4 was
24 marked for identification.)

25 BY MR. REIDELER:

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1 Q. This is a memorandum dated October
2 21st, 1988 from Michael Schwartz to Laura
3 Kramedas. I believe that's the way she
4 pronounces her name.

5 A. Kramedas.

6 Q. Kramedas. And it notes that you'll
7 prepare a letter authorizing Amcell to sign
8 purchase orders on behalf of the corporation, is
9 that correct?

10 A. Yes.

11 Q. Did you prepare such a letter, if you
12 recall?

13 A. I don't specifically recall.

14 Q. If you were to prepare such a letter,
15 would it require Mr. Thompson's approval?

16 A. Yes.

17 MR. REIDELER: I would like to have
18 this item labeled Lokting Number 5, please.

19 (Lokting Exhibit No. 5 was
20 marked for identification.)

21 BY MR. REIDELER:

22 Q. This is a one-page letter dated May
23 19th, 1989 to Mr. Lokting from Mark Panetta.
24 Mr. Panetta is asking for authority to sign
25 checks on behalf of the corporation.

1 A. Yes, that's correct.

2 Q. Who is Mr. Panetta?

3 A. Mark Panetta was the controller who was
4 assigned to the Atlantic City system during the
5 first few years of our management arrangement
6 with Comcast. In particular he was involved
7 during the construction phase and during the
8 first year or two of the start-up operations.

9 Q. Did he hold that position at the time
10 this letter was drafted?

11 A. Yes, he did.

12 Q. Do you recall if his request was
13 granted?

14 A. His request eventually developed into
15 an overall check signing policy that we
16 developed. I believe that his request was
17 granted at this time as to rent payments for the
18 cell site leases but that was probably the only
19 thing that -- well, and utilities, maybe.
20 Because he references those two things.

21 Q. And who would have granted this
22 request, it would have been Mr. Thompson?

23 A. Yes.

24 MR. REIDELER: That leads us into the
25 next exhibit. I'll have this labeled Lokting

1 Exhibit Number 6, please.

2 (Lokting Exhibit No. 6 was
3 marked for identification.)

4 BY MR. REIDELER:

5 Q. This is a three-page document entitled
6 Policy Statement. Is this the item that you said
7 followed Mr. Panetta's letter?

8 A. That's correct.

9 Q. And could you explain to us more fully
10 what, in fact, it is?

11 A. Well, what it is is it's a way of
12 really processing checks and handling the payment
13 of bills and the incurring of capital
14 expenditures in the ordinary course of business.
15 And it's geared to the approved budget with
16 respect to capital expenses and there are layers
17 of approvals that are necessary to incur capital
18 expenses outside of budget. And there are also
19 specific check signing responsibilities for the
20 issuance of checks from Ellis Thompson
21 Corporation's account in the ordinary course of
22 business.

23 Q. Were you instrumental in drafting this
24 document?

25 A. Yes, I was.

1 Q. And was Mr. Thompson consulted before
2 it was drafted?

3 A. Yes, he was.

4 Q. And did he give his final approval to
5 it?

6 A. Yes, he did.

7 Q. Did he play any role in the drafting of
8 the document?

9 A. In the physical language?

10 Q. Yes. Or let me take that back. Into
11 the overall concepts of what would be done, the
12 policy itself.

13 A. Yes, he did. In particular, the
14 specification of the various layers and the
15 approvals necessary for each level of payment
16 authorization or expenses that were incurred.

17 Q. These were initiated by Mr. Thompson,
18 these concerns?

19 A. Yes.

20 MR. REIDELER: I would like to have
21 this item labeled Lokting Number 7, please.

22 (Lokting Exhibit No. 7 was
23 marked for identification.)

24 BY MR. REIDELER:

25 Q. This is titled Intercarrier Roamer

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1 Service Agreement. Do you recognize the
2 document?

3 A. In general.

4 Q. When you say in general, I presume this
5 is a standard form?

6 A. Yes, it is.

7 Q. And are there any of these forms that
8 you see and Mr. Thompson sees?

9 A. Scores of them.

10 Q. Are they all signed by Mr. Thompson?

11 A. Yes, they are.

12 Q. Do you know if it's the same form used
13 by Comcast Cellular Systems?

14 A. Yes, I believe it is.

15 Q. Now, since Comcast and Ellis Thompson
16 Corporation use the same service contract, do
17 they have the same service rates, if you know?

18 A. I do not believe that they have
19 identical rates, no.

20 Q. You think they are different?

21 A. I do believe they are.

22 Q. And could you tell me why this is?

23 A. The Atlantic City rates are set and
24 adjusted from time to time to address the
25 specific competitive market conditions of

1 Atlantic City.

2 Q. And who decides on that?

3 A. Mr. Thompson.

4 MR. REIDELER: I would like this
5 labeled Lokting 8, please.

6 (Lokting Exhibit No. 8 was
7 marked for identification.)

8 BY MR. REIDELER:

9 Q. This is a one-page letter dated May
10 10th, 1991, to Anna Hillman from you. Do you
11 recognize the letter?

12 A. Yes, I do.

13 Q. And it states that Mr. Thompson has
14 approved the roamer rate change, is that correct?

15 A. Yes.

16 Q. Is Mr. Thompson's approval required of
17 all roamer rate changes?

18 A. Yes.

19 Q. So is it a fair statement to say that
20 Mr. Thompson's involvement is ongoing as far as
21 roamer rates go?

22 A. Yes, it is.

23 Q. From the beginning, you set the rate,
24 what the initial rate would be and he has okayed
25 or given his approval of every change that has

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